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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF: J.L., CHILD IN NEED OF SERVICES,	)	
AMANDA LUTZ,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0606-JV-496
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Appellee (Guardian ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0601-JC-2829

January 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent Amanda Lutz appeals from the trial court's determination that her minor child, J.L., is a child in need of services (CHINS) in an action initiated by the Marion County Department of Child Services (DCS). Specifically, Lutz argues that the DCS did not prove by a preponderance of the evidence that J.L. was a CHINS. Finding that the trial court's determination was not erroneous, we affirm the judgment of the trial court.

FACTS

On Friday, January 13, 2006, Lutz took then five-year-old J.L. to the home of Alma Lopez, J.L.'s paternal grandmother.[1] Lutz left J.L. in Lopez's care and told her that she would return for her son the following Monday. On Monday, Lutz called Lopez and informed her that she was having trouble finding transportation and would return Tuesday. Lutz did not return on Tuesday. When Lopez next spoke to Lutz, she asked Lutz for a medical authorization for J.L. in case he needed medical treatment while in her care. Lutz refused to supply Lopez with a medical authorization.

On January 18, 2006, Lopez called the DCS and reported that J.L. had been abandoned. The DCS removed J.L. from Lopez's care on January 20, 2006. Lutz was interviewed on January 23, 2006, and the DCS noted that "her behavior was erratic and her mental health was [] currently unstable." Appellant's App. p. 29. At the interview, Lutz admitted that she had used cocaine two weeks ago and had smoked marijuana three days

[1] J.L.'s father, Joaquin Lopez, was incarcerated at the Westville Correctional Facility while J.L. was in Lopez's care.

ago—the day that J.L. was removed from Lopez's care.

The DCS filed a CHINS petition on January 24, 2006. A fact-finding hearing was held on April 25, 2006, and the trial court found J.L. to be a CHINS on May 18, 2006. Lutz now appeals.

DISCUSSION AND DECISION

Lutz's sole argument on appeal is that insufficient evidence was presented at the hearing to support the trial court's determination that J.L. was a CHINS. Specifically, Lutz argues that she acted as a responsible mother by leaving J.L. in Lopez's supervised care.

The DCS was required to prove by a preponderance of the evidence that J.L. was a CHINS. In re A.H., 751 N.E.2d 690, 695 (Ind. Ct. App. 2001). A child is considered a CHINS if before the age of eighteen:

> (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
>
> (2) the child needs care, treatment, or rehabilitation that:
>
> > (A) the child is not receiving; and
> >
> > (B) is unlikely to be provided or accepted without the coercive intervention of the court.

Ind. Code § 31-34-1-1. When we review the sufficiency of the evidence, we consider only the evidence and reasonable inferences therefrom that are most favorable to the trial court's judgment. A.H., 751 N.E.2d at 695. We neither reweigh the evidence nor reassess the credibility of the witnesses. Id.

We do not deny that Lutz acted responsibly by leaving J.L. in Lopez's supervised care when she left Indianapolis. However, Lutz did not return for J.L. when promised, and she refused to give Lopez a medical authorization for J.L. as Lopez requested. It was irresponsible for Lutz to not take adequate precautions to ensure that J.L.'s needs were met and to fail to return as promised, prompting Lopez to call the DCS.

Moreover, Lutz was very "up and down" and "a little anxious" during the January 23, 2006, interview with DCS personnel. Tr. p. 20. She admitted that she "had used cocaine [] two weeks prior to [the interview and] that she had used marijuana three days prior [to the interview]." Tr. p. 19-20. J.L. was removed from Lopez's care on January 20, 2006—three days prior to Lutz's interview. Therefore, Lutz admitted to using marijuana the same day that her son was removed from Lopez's care because the DCS determined that Lutz had "abandoned" him. Appellant's App. p. 29. At the hearing, Lutz stated that she did not "know whether to smile or cry" when her son was removed. Tr. p. 37.

In sum, sufficient evidence was presented at the fact-finding hearing for the trial court to determine by a preponderance of the evidence that J.L. was a CHINS. In essence, Lutz's arguments on appeal amount to an invitation for us to reweigh the evidence—an invitation that we decline.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.